IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9061 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMVIR JAYRAM SHRIVAS

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

Ms.Harsha Devani, learned A.G.P. for respondents

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 13/10/2000

ORAL JUDGEMENT

This Special Civil Application is directed against the detention order dated 9.6.2000 passed against the petitioner by the Police Commissioner, Ahmedabad City detaining him under the provisions of Gujarat Anti Social Activities Act, 1985. The petitioner is detained as a bootlegger at Special Jail, Porbandar since 9.6.2000.

No reply to the petition has been filed.

The grounds enclosed with the detention order show that 3 criminal cases under the Bombay Prohibition Act were registered against the petitioner on 29.1.2000, 1.5.2000 and 20.5.2000 and investigation was pending against the petitioner in these 3 cases at the time when the detention order was passed. The detaining authority has referred to petitioner's criminal and anti social activities in the context of these 3 criminal cases and has also mentioned that the petitioner's activities relating to country liquor are injuries to the public health. On the basis of the aforesaid criminal cases and the criminal and anti social activities, to which reference has been made by the detaining authority in the detention order and the bald mention that his activities were injurious to public health, even with reference to Kanuji S.Zala's case, reported in 1999(2) GLH 415, in absence of any cogent and credible material, it cannot be said that there is a case of breach of public order against the petitioner. It is at the most a case of breach of law and order.

Besides this, reference has been made about the incidents dated 27.5.2000 and 25.5.2000 with regard to which the witnesses have deposed against the petitioner's anti social activities. The statements of these witnesses were recorded on 7.6.2000 and it is not disputed that these statements recorded on 7.6.2000 were verified on 8.6.2000 and the detention order was passed on 9.6.2000. The detaining authority has invoked Sec.9(2) of the Act for non disclosure of the identity of the witnesses. Learned counsel for the petitioner has cited an unreported decision dated 6.10.2000 in Special Civil Application No.8546/2000 wherein the earlier decision of this court rendered in the case of Kalidas Chandubhai Kahar v. State of Gujarat, reported in 1993(2) GLR 1659 was considered, wherein it was held that the detaining authority's satisfaction stands vitiated and that it was a case of wrong exercise of power under S.9(2) of the Act. In this view of the matter, it is found that in the facts of this case also, wrong exercise of power under S.9(2) of the Act is clear.

For the reasons, as aforesaid, the impugned detention order dated 9.6.2000 passed by the Police Commissioner, Ahmedabad City cannot be sustained in the eye of law and the same is hereby quashed and set aside. The respondents are directed to release the petitioner Ramvir Jayram Shrivas forthwith from the Special Jail,

Porbandar where he is detained since 9.6.2000, in case he is not required to be detained in any other matter. This Special Civil Application is allowed. Rule is made absolute.

(M.R.Calla,J)